

BILL NO. 2006-58

ORDINANCE NO. _____

AN ORDINANCE TO REPEAL AND REPLACE CHAPTER 11.14 OF THE MUNICIPAL CODE RELATING TO DRIVING UNDER THE INFLUENCE OF ALCOHOL, CONTROLLED SUBSTANCES, CHEMICALS, POISONS, ORGANIC SOLVENTS OR COMPOUNDS; PROVIDING FOR PENALTIES AND ENHANCEMENTS; PROVIDING FOR RELATED OFFENSES TO DISCOURAGE DRIVING UNDER THE INFLUENCE OF ALCOHOL, CONTROLLED SUBSTANCES, CHEMICALS, POISONS, ORGANIC SOLVENTS OR COMPOUNDS; AND TO PROVIDE FOR OTHER RELATED MATTERS.

Sponsored by: Councilman Steve Wolfson

Summary: Updates and strengthens Municipal Code provisions so as to better discourage, detect and punish those who would drive under the influence of alcohol, controlled substances, chemicals, organic solvents, compounds or any combination of these.

THE CITY COUNCIL OF THE CITY OF LAS VEGAS DOES HEREBY ORDAIN
AS FOLLOWS:

SECTION 1: Title 11, Chapter 14, of the Municipal Code of the City of Las Vegas, Nevada, 1983 Edition, is hereby repealed in its entirety.

SECTION 2: Title 11 of the Municipal Code of the City of Las Vegas, Nevada, 1983 Edition, is hereby amended by adding thereto a new chapter, designated as Chapter 14, consisting of Sections 10 to 80, inclusive, reading as follows:

11.14.010: It is the purpose of this Chapter to:

(A) Serve the City's strong public policy against driving while under the influence of alcohol, controlled substances, chemicals, organic solvents, compounds or any combination of these;

(B) Better detect, discourage, prosecute and punish those who would unreasonably risk driving while under the influence of alcohol, controlled substances, chemicals, organic solvents, compounds or any combination of these;

(C) Minimize the number of victims of those who would jeopardize the safety of themselves, others and their property by undertaking an unreasonable risk of driving while under the influence of alcohol, controlled substances, chemicals, organic solvents, compounds or any combination of these;

1 (D) Avoid conflict with the Nevada Revised Statutes and the Constitutions of the
2 United States of America and the State of Nevada. To this end, nothing herein is to be interpreted to
3 either authorize, license or require what is forbidden in the Nevada Revised Statutes, the Constitution
4 of the United States of America or the Constitution of the State of Nevada, or to forbid what has been
5 expressly licensed, authorized or required therein; and

6 (E) Make violations of this Chapter a misdemeanor, unless greater punishment is
7 otherwise provided by law.

8 **11.14.020:** Except as defined in this Section or in NRS Chapters 453 and 484, all words, terms or
9 phrases used in this Chapter are to have their common meaning:

10 “Actual physical control” with respect to a vehicle means having existing or present bodily
11 restraint, directing influence, domination, or regulation of the vehicle as evidenced by available
12 inferences and presumptions and the totality of the circumstances, including but not limited to:

- 13 (1) Where and in what position the person is found in the vehicle;
- 14 (2) Whether the vehicle’s engine is running or not;
- 15 (3) Whether the person is awake or asleep;
- 16 (4) If the person is apprehended at night, whether the vehicle’s lights are on;
- 17 (5) The location of the vehicle's keys;
- 18 (6) Whether the person was trying to move the vehicle or has moved the vehicle;
- 19 (7) Whether the property on which the vehicle is located is public or private;
- 20 (8) Whether the person must, of necessity, have driven to the location where
21 apprehended;
- 22 (9) Whether the person is the registered owner of the vehicle; and
- 23 (10) Whether there is any injury to the person which corresponds to physical
24 evidence within or damage to the vehicle.

25 “Under the influence or the combined influence” means under a degree of influence that:

- 26 (1) Diminishes a person’s mental or physiological functions so that the risk of an
27 accident is unreasonably increased; or
- 28 (2) In any other manner makes the person incapable of safely driving,

→ as determined from the totality of the relevant and admissible presumptions, opinions, facts and circumstances.

11.14.030: (A) Unless a greater penalty is otherwise provided by law, it is a misdemeanor for any person to:

(1) Drive or be in actual physical control of a vehicle upon a highway or premises to which the public has access while under the influence or the combined influence of an intoxicating liquor, controlled substance, chemical, poison, organic solvent or compound; or

(2) In any other manner violate NRS 484.379.

(B) Unless a greater penalty is otherwise provided by law, a person who is convicted of a violation of Subsection (A) of this Section shall be sentenced in accordance with the applicable provisions of NRS 484.3792(1)(a) and 484.3792(1)(b) (misdemeanor criminal penalty for first and second offenses). In addition, such person:

(1) Shall be subject to the applicable penalties provided for in NRS 484.3791 (civil penalty), 484.3797 (first-time offender evaluation and treatment for alcohol or drug abuse), 484.37975 (second offender mandatory suspension of motor vehicle registration) and 484.3798 (fee for chemical analysis);

(2) Shall be subject to the applicable penalties set forth in NRS 484.3667 (double penalty if committed in a work zone) and 484.3943 (installation and inspection of device to prevent starting of vehicle by one who has consumed alcohol); and

(3) May be ordered by the court to complete an available coroner's program designed to discourage drivers from driving while under the influence or the combined influence of intoxicating liquor, controlled substance, chemical, poison, organic solvent or compound. Such a program and participation therein is especially encouraged where the offense involves one or more of the following:

(a) An accident;

(b) A blood alcohol content of .18 or more;

(c) The use of controlled or prohibited substances; or

(d) An offender who is under the age of 26 years old; and

1 (4) May be ordered to do or refrain from doing any other act the court
2 deems reasonable, given the nature of the offense and the criminal history of the defendant.

3 (C) The provisions of NRS 484.3793 to 484.3947 (miscellaneous provisions
4 regarding the evaluation and treatment for alcohol or drug abuse), apply to a violation of Subsection
5 (A) of this Section.

6 (D) The provisions of NRS Chapter 484 relating to implied consent, testing for
7 intoxication and the definitions of “offense,” “prior offense” or “second offense” are further adopted
8 herein and apply to a suspected violation of Subsection (A) of this Section.

9 **11.14.040:** (A) Unless a greater penalty is otherwise involved (and pursued) for conduct
10 described in Subsection (A) of LVMC 11.14.030 or NRS 484.379, it is a misdemeanor for any person
11 to knowingly drink a beverage having a detectable amount of alcohol while driving or in actual
12 physical control of a motor vehicle upon a highway or on premises to which the public has access.

13 (B) A person convicted of a violation of Subsection (A) of this Section:

14 (1) Unless the court identifies reasonable grounds for ordering a lesser
15 sentence, shall be punished for a misdemeanor with:

16 (a) A fine of at least three hundred dollars; and

17 (b) An order to complete a drinking driver awareness course; and

18 (2) May be ordered to do or refrain from doing any other act the court
19 deems reasonable, given the nature of the offense and the character of the defendant.

20 **11.14.050:** Except as otherwise provided in LVMC 11.14.070, it is unlawful for any person, while
21 in a motor vehicle on a highway or upon a premises to which the public has access, to knowingly
22 possess any bottle, can or other receptacle containing any detectable amount of alcoholic beverage
23 which has been opened or the seal broken, or the contents partially removed.

24 **11.14.060:** (A) Except as otherwise provided in Subsection (B) of this Section or in LVMC
25 11.14.070, it is unlawful for the registered owner of any motor vehicle, or the driver if the registered
26 owner is not then present in the vehicle, to keep in that vehicle, when it is upon any highway, any
27 bottle, can or other receptacle containing any detectable amount of alcoholic beverage which has been
28 opened or the seal broken, or the contents partially removed.

1 (B) The prohibition contained in Subsection (A) of this Section does not apply if
2 the receptacle is kept in the trunk of the vehicle or, if the vehicle is not equipped with a trunk, in some
3 other area of the vehicle not normally occupied by the driver or passengers. For purposes of the
4 preceding sentence, a utility compartment or glove compartment shall be deemed to be within the area
5 normally occupied by the driver and passengers.

6 **11.14.070:** The provisions of LVMC 11.14.050 and 11.14.060 do not apply to:

7 (A) A motor vehicle operated by a common carrier or used to carry passengers for
8 furtherance of a commercial enterprise;

9 (B) A motor vehicle that is operated as part of a duly licensed limousine service and
10 that has a partition between the driver's seat and the passenger seats; or

11 (C) The living quarters of a motor home, camper or recreational vehicle, as those
12 terms are defined in NRS Chapter 482.

13 **11.14.080:** By committee, the judges of the Las Vegas Municipal Court shall continue to supervise
14 and monitor the operation of a program of education and counseling on the use and abuse of alcohol
15 and controlled substances for the benefit of persons who:

16 (A) Are convicted in the Municipal Court of violating this Chapter or any ordinance
17 corresponding to NRS 484.379; or

18 (B) Have agreed or acquiesced to such education or counseling pending an
19 anticipated disposition of a charge of violating this Chapter or any ordinance corresponding to NRS
20 484.379.

21 SECTION 3: If any section, subsection, subdivision, paragraph, sentence, clause or
22 phrase in this ordinance or any part thereof is for any reason held to be unconstitutional or invalid or
23 ineffective by any court of competent jurisdiction, such decision shall not affect the validity or
24 effectiveness of the remaining portions of this ordinance or any part thereof. The City Council of the
25 City of Las Vegas hereby declares that it would have passed each section, subsection, subdivision,
26 paragraph, sentence, clause or phrase thereof irrespective of the fact that any one or more sections,
27 subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional,
28 invalid or ineffective.

SECTION 4: Whenever in this ordinance any act is prohibited or is made or declared to be unlawful or an offense or a misdemeanor, or whenever in this ordinance the doing of any act is required or the failure to do any act is made or declared to be unlawful or an offense or a misdemeanor, the doing of such prohibited act or the failure to do any such required act shall constitute a misdemeanor and upon conviction thereof, shall be punished as provided for herein, where such punishment is specifically provided for, and where not so provided for, by a fine of not more than \$1,000.00 or by imprisonment for a term of not more than six months, or by any combination of such fine and imprisonment. Any day of any violation of this ordinance shall constitute a separate offense.

SECTION 5: All ordinances or parts of ordinances or sections, subsections, phrases, sentences, clauses or paragraphs contained in the Municipal Code of the City of Las Vegas, Nevada, 1983 Edition, in conflict herewith are hereby repealed.

PASSED, ADOPTED and APPROVED this _____ day of _____, 2006.

APPROVED:

By OSCAR B. GOODMAN, Mayor

ATTEST:

BARBARA JO RONEMUS, City Clerk

APPROVED AS TO FORM:

Date

1 The above and foregoing ordinance was first proposed and read by title to the City Council on the
2 _____ day of _____, 2006, and referred to the following committee composed of
3 _____ and _____ for recommendation;
4 thereafter the said committee reported favorably on said ordinance on the _____ day of
5 _____, 2006, which was a _____ meeting of said Council; that at said
6 _____ meeting, the proposed ordinance was read by title to the City Council
7 as first introduced and adopted by the following vote:

8 VOTING "AYE": _____

9 VOTING "NAY": _____

10 ABSENT: _____

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12 APPROVED:

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14 By _____
OSCAR B. GOODMAN, Mayor

15 ATTEST:

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17 BARBARA JO RONEMUS, City Clerk

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